



**Division of Local Assistance
Office of Procedures Development**

Process Review #01-02

AMERICANS WITH DISABILITIES ACT

FINAL REPORT

1. Prepared By:	Original Signed By _____ EUGENE SHY Process Review Engineer	6/28/02 _____ Date
2. Recommend Approval:	Original Signed By _____ KEVIN POKRAJAC, Chief Office of Procedures Development	6/28/02 _____ Date
3. Approved:	Original Signed By _____ TERRY L. ABBOTT, Chief Division of Local Assistance	6/28/02 _____ Date



I. EXECUTIVE SUMMARY

The goal of this review was to sample and measure local agency compliance with Title II of the American Disabilities Act (ADA) using a sample of twelve local agencies within California. The requirements are codified at 28 Code of Federal Regulations (CFR) Part 35, Sections 35.105-107 and 35.150(c) and (d). In essence, the CFR requires each local agency with 50 or more employees, subject to Title II of the ADA, to complete a "Transition Plan" by July 26, 1992; a "Self Evaluation" by January 26, 1993; and structural modifications to provide ADA access by January 26, 1995.

The California Division of the Federal Highway Administration (FHWA) requested Caltrans to perform this ADA process review. Twelve local agencies, one in each Caltrans district, were selected jointly by FHWA and Caltrans to represent a cross section of the cities, counties, and public agencies within California. The local agencies surveyed consisted of five counties, six cities, and one transportation authority. The vehicle used to conduct the survey was a "Survey" form which was transmitted by the District Local Assistance Engineers (DLAEs) to a local agency within their district using a suggested letter of transmittal (Attachment 1). The suggested letter of transmittal was intended to be non-threatening and stated *"This survey is for informational purposes only. The answers provided by the local agencies will not be used as a basis for the local agencies to qualify or not qualify for any Federal and/or State programs."* Included with the letter of transmittal was a "Survey" form, which include applicable ADA sections from the CFR. The applicable ADA sections were included to give the local agencies immediate access to the ADA regulations and to help ensure that they understood the survey form and responded correctly.

All of the local agencies that received the survey form completed and returned them to the DLAEs. Their responses were tabulated in a matrix format which is included with the "Findings, Observations, and Recommendations" (IV). Four local agencies (including the transportation authority) were in full ADA compliance, three reported no accomplishments in ADA compliance to date, and five were in various stages of ADA compliance. Copies of the completed surveys have been provided to the Department's Division of Civil Rights and the FHWA. The originals will be filed with this process review.

II. PROCESS REVIEW CHRONOLOGY

A. Background:

Karen Bobo, Equal Opportunity Specialist, FHWA, and Doug Ford, ADA/Disability Program Administrator, Division of Civil Rights, requested the Division of Local Assistance to conduct a process review to determine whether the ADA requirements specific to transition plans and self evaluation were being met. On October 11, 2001, a memorandum was sent to all DLAEs requesting that they transmit the survey to the selected local agency in their district to be completed and returned by October 31, 2001. All surveys were completed and returned (last one received early in January 2002).

B. Process Review:

The “Survey” form addressed two aspects of the ADA, which should have been completed and implemented by the local agencies at the time of this process review.

The first aspect, “Self Evaluation,” which should have been completed by January 26, 1993, and contains the local agency’s assessment of its current policies and practices; identifies and correct those policies and practices inconsistent with Title II of ADA.

The second aspect, “Transition Plan,” should have been completed by all local agencies with 50 or more employees by January 26, 1992, to identify the physical barriers that limit accessibility, to describe the methods to be used to remove the physical barriers, and to provide a schedule for taking the steps necessary to achieve compliance with Title II of the ADA.

As previously mentioned, the letter of transmittal sent to the local agencies included the survey form and copies of the applicable ADA regulations from the CFR.

No fieldwork was involved in this process review as it was generally accomplished by mail with a few being returned by fax. In addition to returning the completed surveys, the local agencies were also asked to return a copy of their Executive Summary or the first two pages of the “Self Evaluation”. Most of the local agencies that have completed their “Self Evaluation” returned a copy along with their completed survey.

The survey results revealed varying degrees of compliance as discussed in the foregoing Executive Summary and as shown in the matrix tabulation. The best way to describe the local agency results would be a mixed bag. The smallest local agency, one middle size local agency, and two of the large local agencies (one being a transportation authority) were in full compliance, while the remaining local agencies varied from being nearly fully compliant to having taken no action and to being totally non-compliant. Of all of the local agencies surveyed, compliance was deemed to be the most important and critical for the transportation authority (which was found to be in full compliance based on its response) due to the large numbers of handicapped passengers that use the transportation authority’s facilities each day.

III. PROCESS REVIEW PLAN

A. Goal of Review:

The goal of this process review was to sample local agencies within California and to measure their progress in meeting the requirements of Title II of the ADA.

B. Objective of Review:

The objective of the review was to use the ADA “Survey” form to determine the level of ADA compliance of each of the twelve local agencies (one in each district). These local agencies were believed to be a cross section of local agencies in California.



C. Background:

No formal "Process Review Plan" was prepared. It was determined at the beginning, that it would not be necessary to prepare a formal "Process Review Plan" as the October 11, 2001, memorandum to DLAEs was deemed to be sufficient for that purpose.

D. Method & Responsibilities:

The methods of the review consisted of:

1. A memorandum dated October 11, 2001, transmitted to all DLAEs.
2. A draft "transmittal letter" (Attachment 2) for transmittal of the "Survey" form and a copy of Title 28, CFR, Sections 35.105, 106, and 150 to the local agencies from the DLAE.
3. The completed surveys returned to the DLAEs.

E. Review Team

Eugene Shy, Caltrans, Division of Local Assistance, Process Review Engineer
Karen Bobo, Equal Opportunity Specialist, FHWA California Division
Doug Ford, ADA/Disability Program Administrator, Caltrans, Division of Civil Rights

F. Review Schedule

Planning for this process review began in September 2001. A memorandum dated October 11, 2001 was sent to all DLAEs. The local agencies were requested to complete and return the survey to the DLAEs by October 31, 2001; but in actuality the twelfth completed survey was received at Headquarters in early January 2002. There were no impacts due to the delay in receiving the completed surveys.

IV. FINDINGS, OBSERVATIONS, AND RECOMMENDATIONS

Findings:

Not all of the local agencies sampled had completed their "Self Evaluation," "Transition Plan" and structural modifications as required by the ADA regulations. The local agency responses to the survey were tabulated in a matrix format and are shown in the following table.

SURVEY RESULTS



TITLE II OF THE ADA

Caltrans District	Local Agency	No. of Employees <50 <1000 >1000	Self Evaluation Completed	Transition Plan Completed	Structural Modifications Now Made	Year Structural Modifications To Be Complete
1	County	X	NO	NO	0%	Not known
2	City	X	NO	NO	0%	Not known
3	County	X	NO	NO	0%	Not known
4	City	X	YES	YES	50 - 75%	2005+
5	County	X	YES	YES	100%	Completed
6	City	X	YES	YES	100%	Completed
7	Transportation Authority	X	YES	YES	100%	Completed
8	City	X	YES	YES	25-50%	2005+
9	City	X	YES	YES	100%	Completed
10	County	X	YES	NO	100% except for Deficiencies	Nearly Completed
11	City	X	YES	YES	0%	2005+
12	County	X	YES	YES	25 – 50%	2003

Observations:

As indicated by the responses of the twelve local agencies that were sampled and tabulated in the matrix format: four are in full compliance, three have made no reportable progress toward complying with ADA, and five are in various stages of ADA compliance. In almost every case,



each local agency that was not in full compliance with ADA, stated that it was due to either personnel and/or funding restraints.

Recommendations:

Since the purpose of this ADA “Survey” was only to measure the state of present compliance of local agencies using a sample of twelve local agencies in California, it would not be appropriate to enact sanctions or take other punitive actions against those local agencies found in non-compliance. However, it would be appropriate to alert the local agencies in California by letter that non-compliance with Title II of the ADA may jeopardize their eligibility for Federal-aid funds at some future date.

V. PROCESS REVIEW CONCLUSIONS

The goal of this review was achieved, but based upon the findings, it is obvious that it will require additional emphasis, funding, and/or penalties to get full ADA compliance by all of the local agencies within California. It is beyond the scope of this process review to determine the methods that need to be used to achieve full ADA compliance.

Attachments

1. Suggested transmittal letter to local agency, Survey Form, and Title 28, CFR, Sections 35.105, 106, and 150
2. October 11, 2001 memorandum to DLAEs

DEPARTMENT OF TRANSPORTATION
DISTRICT LETTERHEAD

Date

County/City/Authority

Attention:

Street

City, State Zip

Dear Mr./Ms.

The Federal Highway Administration (FHWA) has requested the California Department of Transportation (Department) to conduct a process review consisting of a survey of a small sample of the local agencies in California. Your agency has been included in this sample. The survey is to measure the progress of local agencies in meeting the requirements of Title II of the Americans with Disabilities Act (ADA). Sections 35.105, 106, and 150 of Title 28 of the Code of Federal Regulations have been enclosed for your information.

This survey is for informational purposes only. The answers provided by your agency will not be used as a basis for the local agencies to qualify or not qualify for any Federal and/or State programs.

Please complete the enclosed "SURVEY" form and return it in the enclosed self-addressed, stamped envelope by October 31, 2001. If you have any questions concerning the survey, please contact Gene Shy at (916) 651-6552.

On behalf of both FHWA and the Department, we express our appreciation and thanks to your agency for providing this information concerning Title II of the ADA.

Sincerely,

District Local Assistance Engineers

Enclosures

SURVEY

TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA)

Regulatory References: 28 Code of Federal Regulations (CFR)
35.105 - 35.107; 35.150(c) and (d)

(Name of Local Agency)

(Address)

1. How many employees (both full and part time) does your Agency employ?

☐ Under 50 ☐ Under 1000 ☐ Over 1000

2. Has your Agency completed a "Self Evaluation" in accordance with Title II?

☐ Yes ☐ No

A. If yes, date completed _____

B. If yes, please return a copy of the "Executive Summary" or first 2 pages of the "Self Evaluation" with this SURVEY.

Copy Returned? ☐ Yes ☐ No

C. If not complete, what are the reasons? _____

3. Has your Agency completed a "Transition Plan" in accordance with Title II?

☐ Yes ☐ No

A. If yes, date completed _____

B. If yes, please indicate what percentage of the structural modifications to achieve program accessibility have been made.

☐ 0% ☐ Under 25% ☐ Under 50% ☐ Under 75% ☐ 100%

C. If yes and less than 100%, please indicate the year when you expect 100% of the structural modifications to be completed.

☐ 2002 ☐ 2003 ☐ 2004 ☐ 2005 or after

D. If not complete, what are the reasons? _____

4. Name, title, and telephone number of employee currently designated to handle Title II matters?

(Name and Title)

()

(Telephone Number)

ATTACHMENT #1

[Code of Federal Regulations]
[Title 28, Volume 1]
[Revised as of July 1, 2001]
From the U.S. Government Printing Office via GPO Access
[CITE: 28CFR35.105]

[Page 503-504]

TITLE 28--JUDICIAL ADMINISTRATION

CHAPTER I--DEPARTMENT OF JUSTICE

PART 35--NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SE

Subpart A--General

Sec. 35.105 Self-evaluation.

(a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.

(b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.

(c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

- (1) A list of the interested persons consulted;

[[Page 504]]

- (2) A description of areas examined and any problems identified; and

- (3) A description of any modifications made.

(d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation.

(Approved by the Office of Management and Budget under control number 1190-0006)

[56 FR 35716, July 26, 1991, as amended by Order No. 1694-93, 58 FR 17521, Apr. 5, 1993]

[Code of Federal Regulations]
[Title 28, Volume 1]
[Revised as of July 1, 2001]
From the U.S. Government Printing Office via GPO Access
[CITE: 28CFR35.106]

[Page 504]

TITLE 28--JUDICIAL ADMINISTRATION

CHAPTER I--DEPARTMENT OF JUSTICE

PART 35--NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SE

Subpart A--General

Sec. 35.106 Notice.

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

[Code of Federal Regulations]
[Title 28, Volume 1]
[Revised as of July 1, 2001]
From the U.S. Government Printing Office via GPO Access
[CITE: 28CFR35.150]

[Page 507-508]

TITLE 28--JUDICIAL ADMINISTRATION

CHAPTER I--DEPARTMENT OF JUSTICE

PART 35--NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SE

Subpart D--Program Accessibility

Sec. 35.150 Existing facilities.

(a) General. A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not--

(1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or

(3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with Sec. 35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

(b) Methods--(1) General. A public entity may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A public entity, in making alterations to existing buildings, shall meet the accessibility requirements of Sec. 35.151. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

[[Page 508]]

(2) Historic preservation programs. In meeting the requirements of

ATTACHMENT #1

Sec. 35.150(a) in historic preservation programs, a public entity shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (a)(3) of this section, alternative methods of achieving program accessibility include--

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) Time period for compliance. Where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made within three years of January 26, 1992, but in any event as expeditiously as possible.

(d) Transition plan. (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.

(2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.

(3) The plan shall, at a minimum--

(i) Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

(4) If a public entity has already complied with the transition plan requirement of a Federal agency regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this paragraph

(d) shall apply only to those policies and practices that were not included in the previous transition plan.

(Approved by the Office of Management and Budget under control number 1190-0004)

[56 FR 35716, July 26, 1991, as amended by Order No. 1694-93, 58 FR 17521, Apr. 5, 1993]

*ATTACHMENT #2***Memorandum**

**To: DISTRICT LOCAL ASSISTANCE ENGINEERS
DISTRICTS 01-12**

Date: October 11, 2001

**File: American Disability
Act (ADA)**

**From: DEPARTMENT OF TRANSPORTATION
DIVISION OF LOCAL ASSISTANCE - MS 1**

Subject: American Disability Act (ADA) Process Review #01-02

The Federal Highway Administration has requested the Division of Local Assistance to conduct a process review by performing an ADA survey of one local agency in each Caltrans District. The local agencies that have been selected are as follows:

<u>District</u>	<u>Local Agency</u>	<u>District</u>	<u>Local Agency</u>
1	County	7	Transportation Authority
2	City	8	City
3	County	9	City
4	City	10	County
5	County	11	City
6	City	12	County

Attached for your action is a "draft" letter for your use and the "Survey" form to be enclosed with the letter. Please prepare and send them to the local agency that is listed above for your District.

The Survey form is to be completed and returned by the local agency to the District Local Assistance Engineers by October 31, 2001. If for some reason the local agency has not returned the survey form to you by October 31, 2001, please remind the local agency to return it.

After the local agency has returned the completed survey form to you, please retain a copy and forward the original to:

Gene Shy, Process Review Engineer
Division of Local Assistance
1120 N Street, MS 1
Sacramento, CA 95814

District Local Assistance Engineers

October 11, 2001

Page 2

Your cooperation in assisting with this process review is greatly appreciated. If you have any questions, please contact Gene Shy at (916) 651-6552 or Calnet 8-461-6551.

A handwritten signature in black ink, appearing to read "Terry L. Abbott". The signature is fluid and cursive, with the first name "Terry" being more prominent than the last name "Abbott".

TERRY L. ABBOTT

Chief

Division of Local Assistance

Attachments

c: GShy